

1 COURT OF COMMON PLEAS
2 HAMILTON COUNTY, OHIO
3 - - -
4 STATE OF OHIO, :
5 Plaintiff, :
6 Vs. : Case No. B-9702196
7 LOUIS MERRIWEATHER, :
8 Defendant. :
9

10 - - -
11 COMPLETE TRANSCRIPT OF PROCEEDINGS
12 - - -

13 BRADLEY GREENBERG, ESQ.
14 On behalf of the Plaintiff.
15 DANIEL F. BURKE, ESQ.
16 On behalf of the Defendant.
17 - - -

18
19 BE IT REMEMBERED that upon the
20 hearing of this cause, on June 18, 1997, before
21 the Honorable Robert Kraft, Judge of the said
22 Court of Common Pleas, the following proceedings
23 were had.
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E-X-H-I-B-I-T-S

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COURT'S EXHIBIT 1:

5

VICTIM IMPACT STATEMENT

6

ARRESTING OFFICER'S STATEMENT

7

PRESENTENCE REPORT

8

CLINIC EVALUATION

9

MARKED AT PAGE 19, LINE 24

10

(ALL EXHIBITS IN THE CUSTODY OF THE

11

EXHIBIT CLERK.)

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1 MORNING SESSION, JUNE 18, 2004

2 P-R-O-C-E-E-D-I-N-G-S

3 THE COURT: I have State of Ohio v.

4 Louis Merriweather, B-9702196;

5 Mr. Daniel Burke, Jr., for the

6 defendant.

7 And this matter is on for sentencing

8 this morning.

9 And, Mr. Burke, have you read the

10 various reports generated by the Probation

11 Department and the clinic?

12 MR. BURKE: Yes, I have, your Honor.

13 THE COURT: All right. Mr.

14 Merriweather, on May 15, 1997, you entered

15 a plea of guilty in Counts 1 and 2 as

16 charged.

17 This is a rape charge, described as

18 felony of the first degree, carrying a

19 possible penalty in jail of anywhere from

20 three to ten years.

21 Factually, this is a victim under the

22 age of 13, is it?

23 MR. BURKE: That's correct, Judge.

24 THE COURT: No force being used an as

25 a representation of the factual pattern.

1 This is a sentence under the Senate Bill 2
2 provisions of the code for offenses
3 occurring after July 1, 1996.

4 There is a presumption of prison in
5 this matter. And as part of the plea
6 bargain, Counts 3 and 4 were dismissed.

7 It was also recognized that on the
8 basis of his history and the plea hearing,
9 that he would be subject to a sexual
10 predator designation, which, if found
11 affirmatively on the facts, would carry the
12 requirement of lifetime reporting, among
13 other statutory requirements, if and when
14 he is released from prison.

15 Have I stated everything there, Mr.
16 Burke?

17 MR. BURKE: That's correct, Judge.

18 THE COURT: Now, sir, are you ready
19 to proceed with sentencing this morning?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And, Mr. Burke, then, is
22 there anything that you want to say before
23 sentence is passed?

24 MR. BURKE: Judge, yes, I have a few
25 things.

1 I thank the Court for ordering a
2 presentence report and the evaluation by
3 Dr. Chiappone.

4 I think the Court is aware of, and I
5 submitted to the Court at the time of plea,
6 Mr. Merriweather's complete confession to
7 the police officers.

8 I think that's important. And the
9 reason that I submitted it for review was
10 that he admitted committing these offenses.
11 There is always sorrow or guilt in
12 committing these offenses.

13 I think if you read his statement to
14 the police, there is an indication that he
15 has some psychiatric problems. I think
16 because of a prior offense in '91, and then
17 this follow up in '95 or '96 or late '96,
18 early '97, that this man, Mr. Merriweather,
19 needed help.

20 He has had psychiatric problems, as
21 he tells me, and he has had problems for
22 the last 27, 28 years.

23 In the interview that Dr. Chiappone
24 conducted with his mother, who is present
25 in the courtroom today, Lillian Mullins,

1 and even himself, I think there are all
2 kinds of statements in here as to the
3 character and the guilt.

4 The actions of this man regarding
5 this child are characteristic of some
6 psychiatric problems, and treatment is
7 necessary for this sexual behavior, and I
8 think Dr. Chiappone suggests that.

9 He is suggesting in his conclusion
10 that the POLARIS program in the Ohio
11 Department of Corrections, which is an
12 excellent program.

13 I am well aware of the POLARIS
14 program. A couple of my clients have been
15 there in the past. It's at least a two-
16 year program. If completed, the success
17 rate is extremely high.

18 His mother and sister both agree to
19 the conclusion that he does need an inhouse
20 treatment facility, which is mandatory, to
21 help him get some sexual treatment for his
22 sexual behavior.

23 Mr. Merriweather, himself, basically
24 said that to the psychiatrist who talked to
25 him, that he needs help, and the

1 psychiatrist correctly analyzed his problem
2 and he has told me that. In fact, he wrote
3 a note to me that Dr. Chiappone recognized
4 in ten minutes, after talking to me, what
5 my problems are, and that treatment
6 probably needs to be done in this
7 particular case.

8 I would ask the Court to consider Mr.
9 Merriweather's statements to the police
10 officers where he cooperated in a full
11 statement. His sorrow and his guilt for
12 doing these things is stated in there; his
13 conflict in his own mind, with not only
14 what he is doing, but his inability to stop
15 himself. I think these are clear
16 indications of a sexual problem and sexual
17 behavior problem which needs extreme
18 treatment, so he can be somebody who is
19 released into the community eventually and
20 do something constructive, instead of
21 having these problems hanging over his
22 head.

23 I would ask the Court to consider
24 sentencing in this particular case, and I
25 know the Court does not sentence anybody to

1 the POLARIS program, but I know the Court
2 can send documents to the Ohio Department
3 of Corrections in this matter, where they
4 would enter him in the POLARIS program,
5 which I said earlier is a good program.

6 I think he needs help. He's a man
7 that has been cooperative with me. I find
8 him to be of an average intelligence level.
9 Even in expressing things to me, he knows
10 he can't stop what he is doing to the point
11 where he needs help. It's a shame that he
12 has to be in this situation, and I know he
13 feels bad for the victim in this matter,
14 and I would ask the Court to consider
15 helping him in the best way, and that it's
16 in his best interest and the best interest
17 of society to help him.

18 Thank you.

19 THE COURT: Do you want to add
20 anything, sir, to what your attorney has
21 said?

22 THE DEFENDANT: Yes, your Honor.

23 I am taking medication that makes my
24 mouth dry.

25 I want to say, your Honor, I have

1 been dealing with this problem 28 years. I
2 have been to the Veteran's Commission,
3 asking for help. Nobody would help me.

4 All of a sudden I come in this case
5 that's a moral case, that I shouldn't be
6 here for if I had help.

7 My problems are derived from being in
8 Vietnam at an early age. Can you imagine
9 suffering and getting no help whatever? So
10 now that I can get help, I have to go to
11 prison. I have been in prison for two
12 years. Mentally, I have been there for 28
13 years.

14 THE COURT: Anything else, sir?

15 THE DEFENDANT: No, sir.

16 THE COURT: Did you say somebody in
17 the family is here?

18 What is your name?

19 THE DEFENDANT'S MOTHER: Betty
20 Merriweather.

21 THE COURT: What relationship are you
22 to him?

23 THE DEFENDANT'S MOTHER: It's my son.

24 THE COURT: Is there something you
25 want to say?

1 THE DEFENDANT'S MOTHER: I want to
2 say my son needs help. If there is any way
3 you can help, I would like for you to. He
4 has never been a sassy child -- you know,
5 teenage mischievous -- but he has always
6 been very good, and his problem started --
7 his behavior changed after he came out of
8 the service.

9 THE COURT: Did he come back to live
10 with you then?

11 THE DEFENDANT'S MOTHER: For a while
12 he did.

13 THE COURT: How old was he then?

14 THE DEFENDANT'S MOTHER: In his 20s,
15 I think. He went in the service at 16.

16 THE COURT: How long did he stay with
17 you?

18 THE DEFENDANT'S MOTHER: Four years.

19 THE COURT: Did you notice anything
20 different about him?

21 THE DEFENDANT'S MOTHER: The only
22 thing was his behavior. He was a little
23 bit quicker to get angry, never violently
24 angry. His temper, you know. He couldn't
25 handle -- say you got mad at him about

1 something. He was kind of quick to -- his
2 temper was a little bad, but not to the
3 point that he would fight. He would just
4 walk away. He wouldn't talk. He would
5 just walk away. He never talked about his
6 problem. He never talked about what
7 happened to him in the service. Only one
8 time he did write me that, "Mom, we are
9 killing kids over here, and they were his
10 age. That was it.

11 Other than that, he never talked
12 about it. If I would say something to him
13 about it, he would clam up. He wouldn't
14 say nothing.

15 THE COURT: Did he ever show any of
16 evidence of the kind of conduct that he is
17 here before me for?

18 THE DEFENDANT'S MOTHER: Not in front
19 of me, because he doesn't smoke, drink,
20 curse, or anything in front of me. Any
21 behavior he would have like that, he would
22 never show it in front of me.

23 THE COURT: You were surprised to
24 hear the kind of things that he has done?

25 THE DEFENDANT'S MOTHER: Yes, and

1 then he comes to me. He told me, "Mom, I
2 need help."

3 THE COURT: How long ago was that?

4 THE DEFENDANT'S MOTHER: It's been
5 about since he has been in here, since they
6 picked him up. That's the first time he
7 ever really broke down and said, "Mom, I
8 need help."

9 THE COURT: All right. Thank you.

10 MR. BURKE: Judge, his sister would
11 like to speak.

12 THE COURT: What is your name?

13 MS. MULLINS: Lillian Mullins,
14 M-u-l-l-i-n-s.

15 THE COURT: Real loud.

16 THE WITNESS: Lillian Mullins.

17 THE COURT: What relationship are
18 you?

19 MS. MULLINS: Sister. He is my
20 brother,

21 THE COURT: What did you want to tell
22 me?

23 MS. MULLINS: I want to say basically
24 the same thing she said. He sort of
25 presented himself differently around us. I

1 mean, it was like he had two different
2 personalities. We didn't know of this,
3 what brought him here. When he was around
4 us, he was a different person. He would go
5 off, but he wouldn't go off to a point
6 where he would like hit you or anything.
7 He would, I guess, mouth at you. I guess
8 that's the only word I want to say, but he
9 wouldn't show any signs that he was a child
10 molester or anything like that.

11 I always thought that he had a good
12 attitude around kids. I mean, with my own
13 children, he had a good relationship with
14 my children. They never said that he was
15 anything else except for a perfect uncle.
16 I mean, you know, and --

17 THE COURT: Have you questioned him?
18 How old are your children?

19 MS. MULLINS: My children are 32 and
20 25, so they might have been too old at the
21 time.

22 THE COURT: Too old after he got out
23 of the service?

24 MS. MULLINS: My children were born
25 in '65, and the one was born in '71. He

1 was around the one that was the girl that
2 was born in '71 more so than my son.

3 THE COURT: Have you talked to her
4 about whether or not there's been any
5 experiences with him?

6 MS. MULLINS: Yes, I have.

7 THE COURT: She says there hasn't?

8 MS. MULLINS: There has not been.

9 THE COURT: She seems to be doing all
10 right?

11 MS. MULLINS: She seems to be doing
12 fine.

13 THE COURT: Anything else you would
14 like to tell me?

15 MS. MULLINS: I just feel like he
16 needs help, and I don't really know how to
17 get him help. He needs help. Basically,
18 he needs help.

19 THE COURT: All right. Thank you.

20 Now, are you receiving a Veteran's
21 pension, then?

22 THE DEFENDANT: Yes, I am, your
23 Honor. It's ten percent, \$90 a month.

24 THE COURT: All right. Anything, Mr.
25 Prosecutor?

1 MR. GREENBERG: I have nothing to
2 add, your Honor.

3 THE COURT: How about the Probation
4 Department?

5 THE PROBATION OFFICER: Your Honor,
6 the Ohio Department of Corrections, they
7 just started a new program in Madison, a
8 sexual offenders program. I think that
9 program will be appropriate for him for a
10 lengthy period of time.

11 THE COURT: That's different than
12 what Dr. Chiappone described as the POLARIS
13 program.

14 THE PROBATION OFFICER: A bunch of
15 probationers went last week to that
16 program. It's excellent. It is in
17 Chillicothe. It's with the Ohio Department
18 of Corrections, and he needs to stay there
19 for a lengthy period of time.

20 THE COURT: Mr. Prosecutor, is the
21 victim or a member of the victims's family
22 present today?

23 MR. GREENBERG: No, your Honor.

24 THE COURT: Well, if your experience
25 in the military had anything to do with

1 what you have done with your life since,
2 it's a tragedy.

3 If Dr. Chiappone is giving you some
4 insight and understanding of what you need
5 to do to try to help yourself, you, of
6 course, should be grateful that somebody
7 has finally discovered something that might
8 give you hope for the future. Still you
9 need to be punished for what you have done,
10 sir, which is, of course, unacceptable in
11 society, and we have to recognize that
12 somebody has been injured in some way, and
13 the person who does it has to pay the
14 penalty for it, and, you committed the kind
15 of crimes that are just absolutely
16 unacceptable in society.

17 We have to proceed with sentencing.
18 If there is nothing else at this time, we
19 also have to recognize the need to proceed
20 with the determination of whether or not he
21 is classified as a sexual predator or an
22 individual sexual offender or sexually
23 oriented offender, as set forth in the Ohio
24 Revised Code Section, 2950.02, and
25 subsequent sections.

1 Mr. Burke, you have looked over the
2 form that we received from the Attorney
3 General's Office some time ago?

4 MR. BURKE: Yes.

5 THE COURT: Have you reviewed that
6 with the defendant?

7 MR. BURKE: We have reviewed it to
8 the point where I told him on this
9 particular case that he would have to
10 report. But I told him after he received
11 treatment, he would have to report to the
12 authorities when he was released. I didn't
13 go over each of the qualifications or
14 situations here, but I did explain to him
15 about he had to report.

16 And I told him at the time, I said --
17 I know the offenses are what they are --
18 but once the treatment would be over, then
19 he would have to report wherever he is
20 going to live, so they know what is going
21 on with this man's life.

22 THE COURT: Mr. Prosecutor, as far as
23 the determination is concerned, can we
24 place on the record the information
25 provided in the presentence report

1 concerning prior convictions for sexual
2 offenses. Is that going to be adequate, do
3 you think?

4 MR. GREENBERG: I think it would. I
5 think we can enter into a stipulation to
6 the information in the presentence
7 investigation. We can stipulate to the
8 defendant's record, and we can stipulate to
9 the proceedings when the defendant entered
10 his guilty plea.

11 THE COURT: Mr. Burke, would you
12 concur in that without further evidence in
13 the record that information provided in the
14 presentence report would be acceptable?

15 MR. BURKE: As long as the
16 presentence report, Judge, that you're
17 accepting includes his treatment -- clinic
18 evaluation. I would like that to be
19 included as evidence.

20 THE COURT: That would be an
21 additional exhibit. I think what we ought
22 to do is mark the presentence report.

23 Did you get a copy of that
24 presentence report, or not?

25 MR. BURKE: No, Judge, I got a copy

1 of the clinic report.

2 THE COURT: Do you have an extra copy
3 of the presentence report? Do you have an
4 extra copy?

5 All right. What I would like to do
6 is have the presentence report, the victim
7 impact statement, and the arresting
8 officer's statement and the clinic report
9 jointly marked as Exhibit 1 for the purpose
10 of the record. And do you have the clinic
11 on that, too?

12 MR. BURKE: No, Judge, there is not a
13 clinic.

14 THE COURT: All right.

15 MR. BURKE: Now, we have clinic,
16 Judge.

17 THE COURT: Staple those all
18 together. Let the reporter mark them as
19 Exhibit 1 for the purpose of the sexual
20 offenders's hearing.

21 (Court's Exhibit Number 1 was
22 marked.)

23 MR. GREENBERG: Your Honor, it's my
24 understanding that there was not going to
25 be a hearing on this issue. It's my

1 understanding that the defendant pled
2 guilty to Count 1, Count 2, and he pled
3 guilty to the specifications, that he is a
4 sexually violent predator. That's what the
5 plea bargain was. And we dismissed Count 3
6 and Count 4 with the specifications.

7 THE COURT: Okay. What does that
8 have to do with the requirement on the
9 determination on the obligations post
10 release? Does it have anything to do with
11 that?

12 MR. GREENBERG: Well, I'm just saying
13 that I expect the Court to make that
14 finding and not consider the lesser
15 classifications of sexually motivated
16 offender or habitual offender.

17 THE COURT: I think, even though we
18 have the sexual predator specification in
19 the indictment -- those are in the
20 indictment, right?

21 MR. GREENBERG: Yes, sir,

22 THE COURT: I think we may still have
23 to make a separate finding.

24 Doesn't the specification in the
25 indictment simply make the sentences

1 mandatory?

2 MR. BURKE: No, your Honor.

3 MR. GREENBERG: No.

4 MR. BURKE: There is no mandatory
5 time required.

6 THE COURT: That's what I mean. The
7 sexual predator specifications don't do
8 anything to the underlying sentences?

9 MR. GREENBERG: No.

10 THE COURT: What do you think, Mr.
11 Burke; I still have to make a separate
12 finding?

13 MR. BURKE: I think you have to make
14 a separate finding, and I understand what
15 Mr. Greenberg is saying.

16 THE COURT: There needs to be no
17 further evidence presented?

18 MR. GREENBERG: Right, because he
19 pled guilty to the specifications.

20 THE COURT: I would still be more
21 comfortable if we have in the record what
22 we have now marked as Exhibit 1 as part of
23 the sentencing proceedings, and I'll agree
24 with you on the other, that we don't have
25 to have any further testimony or evidence

1 presented.

2 Looking at my notes on the plea
3 bargain, I don't believe there was anything
4 else included in the plea bargain, was
5 there, Mr. Burke?

6 MR. BURKE: No, your Honor.

7 THE COURT: Am I correct that the
8 same victim is identified in both Counts 1
9 and 2; is that right?

10 MR. BURKE: That's correct, Judge.

11 THE COURT: What were the dates on
12 those two incidents?

13 MR. GREENBERG: The first count, an
14 unspecified date in February,

15 THE COURT: What year?

16 MR. GREENBERG: 1997.

17 THE COURT: And the other?

18 MR. GREENBERG: Also an unspecified
19 date in February of 1997.

20 THE COURT: Okay. All right, then,
21 if there is nothing further to offer, the
22 Court will proceed by advising the
23 defendant that he has certain
24 constitutional rights of appeal.

25 If you're not satisfied with the

1 proceedings of the Court, and you wish to
2 enter an appeal, sir, you're instructed to
3 tell your attorney immediately.

4 If you cannot afford an attorney, the
5 Court has the duty to provide you with an
6 attorney and also provide you with a
7 written copy of the proceedings at no cost
8 to you. Do you understand that, sir?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: All right. The sentence
11 of the Court, then, will be that the
12 defendant be ordered confined to the
13 Department of Corrections of the State of
14 Ohio on Count 1 and Count 2 for ten years
15 on each count;

16 You are ordered to pay the cost of
17 prosecution;

18 The sentences are to run
19 concurrently. And he is to be credited
20 with days locked up.

21 He has been locked up since when?

22 MR. BURKE: He has been locked up
23 since March 23rd.

24 THE COURT: March 23, 1997, until
25 today, which is 6/18/97.

1 Also, at this time, I am making a
2 finding, per the plea, that he is
3 classified as a sexual predator, and that
4 he will be required, when released, to meet
5 the lifetime requirement of residence
6 verification, as provided in the statute.

7 And, Mr. Burke, this form has to be
8 endorsed by you and your client as part of
9 the proceedings, as the Court understands
10 it.

11 THE COURT: Have you got the form
12 that I asked you to look at?

13 MR. BURKE: Yes, Judge, I do.

14 THE COURT: All right. I would like
15 to have that endorsed at this time. Does
16 the defendant have a Social Security
17 number?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: What is your Social
20 Security number, sir?

21 THE DEFENDANT: 276-44-0860.

22 THE COURT: 0860?

23 THE DEFENDANT: Your Honor, may I say
24 something before this?

25 THE COURT: Yes, sir.

1 THE DEFENDANT: Your Honor, as I said
2 before, I have been in prison in my mind
3 for 28 years. Now, for almost the last 90
4 days, I have been able to see some daylight
5 and feel good about myself. And, your
6 Honor, I would ask this Court to please
7 reconsider the sentence. You know what I
8 would say? Two years in the program. I'm
9 I know it would help me. I, for 28 years,
10 I have not had a life.

11 I have not built a concrete life
12 because of my mental condition. Now I have
13 an opportunity to build one, and I beg this
14 Court for that opportunity to build a life,
15 a constructive life where I know what I am
16 doing, and I know which way I have been. I
17 have been confused for 28 years, running
18 around in this system.

19 THE COURT: At this time, the
20 sentence will stand, sir. I will recommend
21 that the Probation Department send copies
22 of the records to the Department of
23 Corrections.

24 The probation officer says there is a
25 new program in effect, and I would

1 certainly encourage that program. If they
2 see fit to modify and make recommendations,
3 certainly the Court will review them. But
4 at this time, the sentence will stand.

5 All right.

6 MR. BURKE: Thank you, Judge.

7 (Proceedings concluded.)

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CERTIFICATE

I, DEBORAH A. KAHLES, RPR, the undersigned, an Official Court Reporter for the Hamilton County Court of Common Pleas, do hereby certify that at the time and place stated herein, I recorded in stenotype and thereafter transcribed the within Transcript of Proceedings and that is a true, complete, and accurate transcript of my said stenotype notes.

IN WITNESS WHEREOF, I hereunto set my hand this 10th day of August, 2004.

DEBORAH A. KAHLES, RPR
Official Court Reporters
Court of Common Pleas
Hamilton County, Ohio